



May 4, 2000

Ms. J. Middlebrooks  
Assistant City Attorney  
City of Dallas  
2014 Main Street, Room 206  
Dallas, Texas 75201

OR2000-1733

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134950.

The City of Dallas Police Department (the “department”) received a request for a specified “legal opinion.” You indicate that the responsive information consists of a memorandum from the office of the city attorney to the department, which you have provided for our review. You state that the memorandum will be released to the requestor. However, prior to its release, you seek to redact certain information from the document. You assert that this information is excepted from disclosure under section 552.111 of the Government Code.

Section 552.111 of the Government Code excepts from required public disclosure an “interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” This exception has two aspects, one of which incorporates the common law “deliberative process privilege.” This aspect of section 552.111 excepts intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity’s policymaking process. Open Records Decision No. 615 at 5 (1993). Its purpose is “to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref’d n.r.e.) (emphasis added). However, an agency’s policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). We note that the document at issue consists of a legal opinion memorandum from an attorney to the department concerning an internal personnel matter. You have not explained how the information you seek to redact relates to any

specific policy deliberation of the department. We therefore conclude that you have not demonstrated the applicability of the “deliberative process privilege” aspect of section 552.111 to the information at issue.

Section 552.111 also incorporates the attorney work product privilege. A governmental body may withhold attorney work product from disclosure if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney’s mental processes, conclusions and legal theories. Open Records Decision No.647 (1996). The first prong of the work product test, which requires a governmental body to show that the document at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery or release believed in good faith that there was a substantial chance that litigation would ensue. Open Records Decision No. 647 at 4 (1996). While you have not stated whether the document at issue was created in anticipation of litigation, you have explained that the department requested the legal opinion at issue in response to the filing of a “class grievance.” The document itself indicates the class grievance pertains to an allegation from several non-exempt employees that they are not receiving proper compensation for their work. We accordingly find that a reasonable person would have concluded, from the totality of the circumstances, that there was a substantial chance that litigation would ensue as a result of the filing of such a grievance. Because the circumstances prompted the department to specifically request a legal opinion on the matter, we additionally believe that the department believed in good faith that litigation would ensue. We therefore conclude that the first prong of the attorney work product test is satisfied. As to the second prong, and upon careful review of the information you have marked for redaction, we agree that this information consists of or tends to reveal an attorney’s mental processes, conclusions or legal theories. We thus conclude you may withhold the information you have marked as attorney work product under section 552.111 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

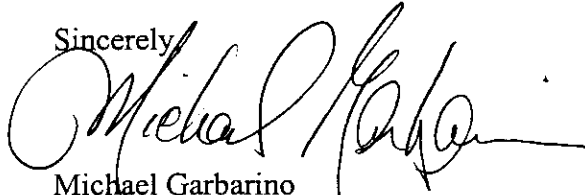
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/ljp

Ref: ID# 134950

Encl. Submitted documents

cc: Mr. Todd Comitini  
Texas Public Workers Association  
CWA/6100  
622 West Main Street, Suite 200A  
Arlington, Texas 76010  
(w/o enclosures)